

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 878

Introduced by Cornett, 45.

Read first time January 11, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-1784, 77-2756, and 77-2794, Reissue Revised Statutes
3 of Nebraska; to change provisions relating to electronic
4 fund transfers, income tax withholding, and overpayments
5 of tax; to eliminate a provision relating to electronic
6 filings and payments; to provide an operative date; to
7 repeal the original sections; and to outright repeal
8 section 77-2769.02, Reissue Revised Statutes of Nebraska.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-1784, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-1784 (1) The Tax Commissioner may accept electronic
4 filing of applications, returns, and any other document required to
5 be filed with the Tax Commissioner.

6 (2) The Tax Commissioner may use electronic fund
7 transfers to collect any taxes, fees, or other amounts required
8 to be paid to or collected by the Tax Commissioner or to pay any
9 refunds of such amounts.

10 (3) The Tax Commissioner may adopt rules and regulations
11 to establish the criteria for acceptability of filing documents
12 and making payments electronically. The criteria may include
13 requirements for electronic signatures, the type of tax for
14 which electronic filings or payments will be accepted, the method
15 of transfer, or minimum amounts which may be transferred. The
16 Tax Commissioner may refuse to accept any electronic filings or
17 payments that do not meet the criteria established.

18 (4) ~~For payments due after January 1, 2006, the~~ The Tax
19 Commissioner may require the use of electronic fund transfers for
20 any taxes, fees, or amounts required to be paid to or collected by
21 the Tax Commissioner for any taxpayer who made payments exceeding
22 ~~twenty thousand~~ five hundred dollars for a tax program in ~~the~~ any
23 prior year for that tax program. The requirement to make electronic
24 fund transfers may be phased in as deemed necessary by the Tax
25 Commissioner. Notice of the requirement to make electronic fund

1 transfers shall be provided at least three months prior to the date
2 the first electronic payment is required to be made.

3 (5) Any person who fails to make a required payment by
4 electronic fund transfer shall be subject to a penalty of one
5 hundred dollars for each required payment that was not made by
6 electronic fund transfer. The penalty provided by this section
7 shall be in addition to all other penalties and applies even if
8 payment by some other method is timely made. The Tax Commissioner
9 may waive the penalty provided in this section upon a showing of
10 good cause.

11 (6) The use of electronic filing of documents and
12 electronic fund transfers shall not change the rights of any
13 party from the rights such party would have if a different method
14 of filing or payment were used. Until criteria for electronic
15 signatures are adopted under subsection (3) of this section, the
16 document produced during the electronic filing of a taxpayer's
17 information with the state shall be prima facie evidence for all
18 purposes that the taxpayer's signature accompanied the taxpayer's
19 information in the electronic transmission.

20 (7) For tax returns due on or after January 1, 2010,
21 the Tax Commissioner may require any person that aids, procures,
22 advises, or assists in the preparation of and files any tax return
23 on behalf of any taxpayer for profit to file an electronic return
24 if the person filed twenty-five or more tax returns in the prior
25 calendar year. The requirement to require electronic filing may be

1 phased in as deemed necessary by the Tax Commissioner.

2 Any person that files a tax return on behalf of a
3 taxpayer must disclose in writing to the taxpayer that the return
4 will be filed in an electronic format and in accordance with rules
5 and regulations prescribed by the Tax Commissioner.

6 (8) Any person who fails to file an electronic return
7 as required under subsection (7) of this section shall be subject
8 to a penalty of one hundred dollars for each return that was not
9 properly filed in addition to other penalties provided by law. The
10 Tax Commissioner may waive the penalty provided in this section
11 upon a showing of good cause.

12 (9) The Legislature hereby finds and determines that the
13 development of a comprehensive electronic filing and payment system
14 for all state tax programs and fees administered by the Department
15 of Revenue is of critical importance to the State of Nebraska.
16 It is the intent of the Legislature that the department implement
17 a mandatory electronic filing system for all state tax programs
18 and fees administered by the department as deemed practicable and
19 necessary for the proper administration of the Nebraska Revenue Act
20 of 1967. It is the intent of the Legislature that the department
21 require the use of electronic fund transfers for any taxes, fees,
22 or amounts required to be paid to or collected by the department as
23 deemed practicable and necessary for the proper administration of
24 the Nebraska Revenue Act of 1967.

25 Sec. 2. Section 77-2756, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-2756 (1) Except as provided in subsection (2) of this
3 section, every employer or payor required to deduct and withhold
4 income tax under the Nebraska Revenue Act of 1967 shall, for each
5 calendar quarter, on or before the last day of the month following
6 the close of such calendar quarter, file a withholding return
7 as prescribed by the Tax Commissioner and pay over to the Tax
8 Commissioner or to a depository designated by the Tax Commissioner
9 the taxes so required to be deducted and withheld in such form
10 and content as the Tax Commissioner may prescribe and containing
11 such information as the Tax Commissioner deems necessary for the
12 proper administration of the Nebraska Revenue Act of 1967. When
13 the aggregate amount required to be deducted and withheld by any
14 employer or payor for either the first or second month of a
15 calendar quarter exceeds five hundred dollars, the employer or
16 payor shall, by the fifteenth day of the succeeding month, pay over
17 such aggregate amount to the Tax Commissioner or to a depository
18 designated by the Tax Commissioner. The amount so paid shall be
19 allowed as a credit against the liability shown on the employer's
20 or payor's quarterly withholding return required by this section.
21 The Tax Commissioner may, by rule and regulation, provide for the
22 filing of returns and the payment of the tax deducted and withheld
23 on other than a quarterly basis.

24 (2) When the aggregate amount required to be deducted
25 and withheld by any employer or payor for the entire calendar year

1 is less than five hundred dollars or the employer or payor is
2 allowed to file federal withholding returns annually, the employer
3 or payor shall, for each calendar year, on or before the last day
4 of the month following the close of such calendar year, file a
5 withholding return as prescribed by the Tax Commissioner and pay
6 over to the Tax Commissioner or to a depository designated by the
7 Tax Commissioner the taxes so required to be deducted and withheld
8 in such form and content as the Tax Commissioner may prescribe and
9 containing such information as the Tax Commissioner deems necessary
10 for the proper administration of the Nebraska Revenue Act of 1967.

11 The employer or payor may elect or the Tax Commissioner may require
12 the filing of returns and the payment of taxes on a quarterly
13 basis.

14 (3) Whenever any employer or payor fails to collect,
15 truthfully account for, pay over, or make returns of the income
16 tax as required by this section, the Tax Commissioner may serve a
17 notice requiring such employer or payor to collect the taxes which
18 become collectible after service of such notice, to deposit such
19 taxes in a bank approved by the Tax Commissioner in a separate
20 account in trust for and payable to the Tax Commissioner, and to
21 keep the amount of such tax in such account until paid over to the
22 Tax Commissioner. Such notice shall remain in effect until a notice
23 of cancellation is served by the Tax Commissioner.

24 (4) Any employer or payor may appoint an agent in
25 accordance with section 3504 of the Internal Revenue Code of 1986,

1 as amended, for the purpose of withholding, reporting, or making
2 payment of amounts withheld on behalf of the employer or payor.
3 The agent shall be considered an employer or payor for purposes
4 of the Nebraska Revenue Act of 1967 and, with the actual employer
5 or payor, shall be jointly and severally liable for any amount
6 required to be withheld and paid over to the Tax Commissioner and
7 any additions to tax, penalties, and interest with respect thereto.

8 (5) The employer or payor shall also file on or before
9 ~~March 15~~ February 1 of the succeeding year a copy of each statement
10 furnished by such employer or payor to each employee or payee
11 with respect to taxes withheld on wages or payments subject to
12 withholding. Any employer, payor, or agent who furnished more than
13 ~~two hundred~~ fifty statements for a year shall file the required
14 copies electronically in a manner approved by the Tax Commissioner
15 that is compatible with federal electronic filing requirements or
16 methods.

17 Sec. 3. Section 77-2794, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-2794 (1) Under regulations prescribed by the Tax
20 Commissioner interest shall be allowed and paid at the rate
21 specified in section 45-104.02, as such rate may from time to time
22 be adjusted, upon any overpayment in respect to the income tax
23 imposed by the Nebraska Revenue Act of 1967.

24 (2) For purposes of this section:

25 (a) The date of overpayment shall be the last day

1 prescribed for filing the original return of such tax;

2 (b) Any return filed before the last day prescribed for
3 the filing thereof, determined without regard to any extension of
4 time to file the return, shall be considered as filed on such last
5 day;

6 (c) Any tax paid by the taxpayer before the last day
7 prescribed for its payment, any income tax withheld from the
8 taxpayer during any calendar year, and any amount paid by the
9 taxpayer as estimated income tax for a taxable year shall be deemed
10 to have been paid on the last day prescribed for filing the return
11 for the taxable year to which such amount constitutes a credit or
12 payment, determined without regard to any extension of time granted
13 the taxpayer;

14 (d) If at the time an overpayment is to be refunded,
15 the taxpayer also has a reported underpayment of the same tax
16 in another year: (i) If the overpayment is for a taxable year
17 ending before the year of underpayment, the overpayment shall be
18 applied to reduce such underpayment as of the last day prescribed
19 for filing the original return of such tax for the year of
20 underpayment; (ii) if the overpayment is for a taxable year ending
21 after the year of underpayment, the overpayment shall be applied to
22 reduce such underpayment as of the last day prescribed for filing
23 the original return of such tax for the year of overpayment; or
24 (iii) if the overpayment is one for which interest is not allowed
25 under this section, the overpayment shall be applied as of the

1 date of the filing of the claim for refund; and interest shall be
2 allowed for any remaining overpayment as provided in subdivision
3 (a) of this subsection;

4 (e) The period of overpayment during which interest
5 shall be allowed shall not include any period during which the
6 overpayment continued due to the unreasonable delay by the taxpayer
7 in filing the claim for refund. For this purpose, the burden
8 of proof shall be on the taxpayer to show that a delay of
9 more than ninety days or one hundred eighty days as prescribed
10 under subdivision (3)(b) of this section after all of the facts
11 required to prepare a correct claim for refund are available is not
12 unreasonable; and

13 (f) The period of overpayment during which interest shall
14 be allowed shall not include any period during which an agreement
15 between the taxpayer and the Internal Revenue Service was not filed
16 as required by subsection (6) of section 77-2786 and the first
17 ninety days after such agreement is filed.

18 ~~(3)~~ If (3)(a) Except as provided in subdivision (b) of
19 this subsection, if any overpayment of income tax imposed by the
20 Nebraska Revenue Act of 1967 is refunded within ninety days after
21 the last date prescribed, or permitted by extension of time, for
22 filing the return of such tax or within ninety days after any
23 original return, and any amended return filed to carry back a loss,
24 was filed, whichever is later, no interest shall be allowed under
25 this section on overpayment.

1 (b) If the Tax Commissioner approves and implements an
2 electronic form or method for filing the return and the return
3 is not filed electronically, any overpayment of income tax imposed
4 by the Nebraska Revenue Act of 1967 may be refunded within one
5 hundred eighty days after the last date prescribed, or permitted
6 by extension of time, for filing the return of such tax or within
7 one hundred eighty days after any original return, and any amended
8 return filed to carry back a loss, was filed, whichever is later,
9 and no interest shall be allowed under this section on overpayment.

10 (c) In the case of amended returns filed for any reason
11 other than to carry back a loss, interest shall be allowed as
12 provided in subsection (1) of this section.

13 Sec. 4. This act becomes operative on January 1, 2011.

14 Sec. 5. Original sections 77-1784, 77-2756, and 77-2794,
15 Reissue Revised Statutes of Nebraska, are repealed.

16 Sec. 6. The following section is outright repealed:
17 Section 77-2769.02, Reissue Revised Statutes of Nebraska.